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Signature [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
E.I.N. [REDACTED]

[REDACTED]
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CP:E:EO:T:3

JAN 28 1997

Dear Applicant:

This refers to your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED]. You have agreed to amend your Articles of Incorporation to include a purpose paragraph, a dissolution provision, and other operating language in order to meet the organizational test requirements under section 501(c)(3) of the Code.

Your officers and directors are [REDACTED] and [REDACTED] who are sister and brother respectively. Other members of your governing board include [REDACTED] and [REDACTED]. The [REDACTED] have agreed to expand the governing board to include community representatives.

The information shows that you were formed to collect clothing and toys for distribution to [REDACTED] refugees. You state that you will approach churches, temples, mosques, and other charitable organizations in order to seek assistance in gathering and shipping clothing and toys to [REDACTED] refugees. Further, you state that you have arranged for three individuals to receive and distribute such goods, [REDACTED], [REDACTED], and [REDACTED]. You state that [REDACTED] and [REDACTED] reside in the city of [REDACTED] and that [REDACTED] resides in the city of [REDACTED].

We understand that [REDACTED] and [REDACTED] are both seaports, and that [REDACTED] is peaceful and has a fledgling local government. However, we understand that there still is gang trouble in [REDACTED]. Also, we understand that Care, UNICEF, and the International Red Cross provide care to refugees in these areas.

You indicate that clothing and toys will be placed in local mosques for distribution, and that some clothing and toys will be given to local tribal chiefs for distribution. You

[REDACTED]

represent that the area religious leaders will assure that the goods are given and not sold to the refugees. Also, You represent that you believe the tribal chiefs will not sell the clothing and toys to members of their tribe. Also, you indicate that in the future you may send food stuffs for distribution.

We contacted your attorney and explained why we needed specific information concerning how the clothing and toys would be distributed. We faxed a copy of the approved Service guidelines (as shown below), which set out the operating procedures an organization must following in making distributions in a foreign country.

(a) "At the outset, [an organization must] appraise[s] its agents of the terms of IRC 170(c) and make[s] clear to its agents that they are subject to the same limitations in distributing its funds;

(b) [An organization] reviews proposed projects in detail to ensure that the projects are reasonably calculated to accomplish one or more of its charitable objectives before turning over any funds to its agents for expenditure;

(c) [An organization] turns over its funds to agents only as needed for specific projects; and

(d) [An organization] (or an independent agent it selects) makes periodic financial audits and requires periodic financial statements to insure that the funds are not being misspent."

Your attorney advised that you would furnish information explaining how you would meet these guidelines. However, we have not as yet received such information.

Moreover, you indicated you would seek assistance from the Red Cross, or other charitable relief agencies with the distribution of the clothing and toys. By fax dated [REDACTED], your attorney advised that you still trying to find a relief agency to assist you with distribution of clothing and toys in [REDACTED].

We were advised by your attorney on [REDACTED], that she had written and phoned you on several occasions but you had not answered her letters or returned her phone calls. She indicated that she did not know whether you had obtained the assistance of a charitable relief agency or not.

Section 501(c)(3) of the Code provides for recognition of exemption of organizations organized and operated exclusively for charitable, religious, educational, and other stated purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provide that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholders or individual", see paragraph (c) of section 1.501(a)-1 of the regulations.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of section 1.501(c)(3)-1(d)(1) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 66-79, 1966-1 C.B. 48, clarifies the holding in Rev. Rul. 63-252, 1963-2 CB 101, which sets out criteria to use in determining whether contributions to a domestic charitable organization (that operates to support a foreign charitable organization) are deductible under section 170(c) of the Code.

Rev. Rul. 66-79, supra, provides that a domestic charity may fundraise on behalf of a specific project of a foreign organization, and receive tax deductible contributions, if the domestic charity has reviewed and determined that the project is in furtherance of a 501(c)(3) purpose that furthers its own exempt purposes, and the domestic charity has control and discretion over the contributions.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that "[e]xempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. . . . The organization must fully describe the activities . . . including the standards, criteria, procedures, and other means adopted or planned to carry out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate . . . its proposed activities will be exempt, a record of actual operation may be required...."

Because your creating document does not expressly provide that you are operated exclusively for charitable and educational purposes; and because your creating document does not contain a proper dissolution provision; and because your articles do not contain language prohibiting your net earnings from inuring to those in control of your operation; and because your articles do not prohibit you from engaging in propaganda, political activities, or excess lobbying activities, we conclude that you do not meet the organizational test as set out in section 1.501(c)(3)-1(b)(1)(i) of the regulations.

Because the information shows that the clothing and toys you collect for distribution to [redacted] refugees, will be shipped and received by three private individuals, rather than by a charitable institution, we conclude that you have not established that you retain and exercise adequate discretion and control over the foreign distribution of the clothing and toys to assure that such items will be distributed for public rather than private purposes, within the meaning of section 1.501(c)(3)-1(d)(1)(ii) of the regulations.

[REDACTED]

Also, even if it is established that the foreign distribution of the clothing and toys are being distributed for public rather than private purposes, you have not established that you have adopted the operating procedure guidelines for organizations that make distributions in foreign countries. Because you have not adopted such guidelines, contributions to you are not deductible by donors under section 170(c) of the Code.

In summary, we concluded that:

(1) You have not furnished sufficient information to establish that you will be organized and operated for public rather than private interests within the meaning of section 1.501(c)(3)-1(d)(1)(i) of the regulations;

(2) You have not furnished sufficient information to establish that you will meet the organizational test as set out in section 1.501(c)(3)-1(b)(1)(i) of the regulations;

(3) You have not established that you have adopted the Service's guidelines for making distributions in foreign countries, and therefore contributions made to you are not deductible by donors under section 170(c) of the Code.

Accordingly, we conclude that you do not qualify for recognition of exemption from federal income tax under Section 501(c)(3) of the Code.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Dallas, Texas. Thereafter, any questions about your federal income tax status should be addressed to that office.

[REDACTED]

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

Sincerely yours,

[REDACTED]

Edward K. Karcher
Chief, Exempt Organizations
Technical Branch 3

- cc: [REDACTED]
- cc: [REDACTED]
- cc: [REDACTED]
- cc: [REDACTED]

CP: G: EU: T: J CP: 6: 10: 1: 3
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